

BILL ANALYSIS

C.S.H.B. 1697
By: Hilderbran
Culture, Recreation, & Tourism
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Governmental entities are requesting from voters through an initiative to establish a tax for the purpose of acquiring real property, conservation easements or other interests in real property to protect open space or natural resources in high population growth areas. The governmental entities are using Chapter 334 of the Local Government Code as the vehicle for the proposition to impose such taxes. Chapter 334 requires that voters vote on the specific use of the tax and lists the different types of uses for the tax. Section 334.001(4)(D) or (F) allows governmental entities to use the tax adopted by the voters, if the voters specifically call for it in the proposition adopting the tax, to acquire real property to protect open space or natural resources.

Once the governmental entities acquire the property designated by the voters to be open space or natural resource, the governmental entities are using the real property to erect major infrastructure (i.e. Water Mains, Sewer Mains, Electrical Towers, Cell Phone Towers, Electrical Substations, and Water and Wastewater Treatment Facilities) not related to the use approved by the voters. Conservation easements acquired by the governmental entity for parkland, open space, natural area, wildlife conservation area, public recreation area, or nature preserve is being used to construct infrastructure not related to the use.

C.S.H.B. 1697 adds a new section to Chapter 183 of the Texas Natural Resources Code to protect conservation easements acquired by governmental entities with tax funds from a proposition approved by the voters to protect open space or natural resources.

RULEMAKING AUTHORITY

It is the committee's opinion that this resolution does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 1697 relates to the protection of real property used as open space or for another similar purpose acquired by governmental entities with tax funds from a proposition approved by the voters to protect open space or natural resources by amending Subchapter A, Chapter 183 of the Natural Resources Code. Section 183.006 (a) defines municipality as a home-rule municipality that owns both a water and electric utility governed by a board of trustees that is not composed exclusively of members of the municipality's governing body and includes a department or agency of the municipality. Section 183.006 of the Natural Resources code applies only to real property subject to a conservation easement evidenced by an instrument dated on or after January 1, 1996 if the easement was acquired by or transferred to a municipality or to a nonprofit entity acting for the municipality for the purpose of establishing or preserving a park, open space, natural area, wildlife conservation area, public recreation area, or a nature preserve. This section also does not apply to real property acquired by a municipality with money collected from the imposition of a tax approved at an election under Chapter 334 of the Local Government Code for the purpose of acquiring an open space, park property, or an area related to the protection of a natural resource. Unless otherwise stated, a municipality or a non profit organization acting for the municipality may not use, or authorize the use of, real property for construction, erection, or operation of a facility unless its purpose directly relates to the operation of the real property of park, open space, natural area, wildlife conservation area, public recreation area, or nature preserve. If the terms of an original conservation easement authorizes the construction or operation of a building, facility, utility project, or other infrastructure, it does not prohibit the construction or operation. C.S.H.B. 1697 provides for a cause of action by the owner of an

interest in the real property burdened by the conservation easement, the holder of the easement, a person having a third-party right of enforcement of the easement, a taxpayer or a person authorized by some other law. A prevailing plaintiff is entitled to damages equal to the cost of restoring the real property to its condition before violation or an injunction requiring the municipality to restore the real property to its condition prior to violation at the municipality's expense. Immunity to suit and to liability is waived for an enforcement suit pertaining to Section 183.006 of the Natural Resources Code or the terms of a conservation easement subject to the same Section. A suit enforcing this Section may be brought for injunctive relief, mandamus, declaratory judgment, or specific performance and damages caused by an action in violation of the Section. A prevailing plaintiff in an enforcement action is entitled to related attorney's fees, court costs, and litigation expenses. If Section 183.006 of the Natural Resources Code is in conflict with any provision of state law or municipal ordinance, the Section controls. C.S.H.B. 1697 does not prohibit the use of real property of a mineral lease applicable to the property or a gas utility, common carrier, or energy transporter defined by Section 186.051 of the Utilities Code, other than a municipally owned utility.

EFFECTIVE DATE

The Act becomes effective immediately upon a two-thirds vote of both chambers. Otherwise, the bill becomes effective on September 1, 2007.

COMPARISON OF ORIGINAL TO SUBSTITUTE

C.S.H.B. 1697 modifies the original heading to relate to the protection of real property used as open space or for another similar purpose and by defining a municipality to mean only a home-rule municipality that owns both a water and electric utility governed by a board of trustees that is not composed exclusively of members of the municipality's governing body. Section 183.006 is changed to protection of certain open space property. Subsection (b-1) adds if the easement and deletes the word which. Adds Subsection (b-2) to read that the real property acquired by a municipality with money collected from the imposition of a tax approved at an election under Chapter 334 of the Local Government Code. Subsection (c) adds Subsection (d) and (k) which provide the terms of an original conservation easement expressly authorizing and does not prohibit the construction or operation of a building, facility, utility project or other item in infrastructure and does not prohibit the use of real property under the terms of a mineral lease applicable to the property or a gas utility, common carrier, or energy transporter, as those terms are defined by Section 186.051 of the Utilities Code, other than a municipally owned utility. Adds Subsection (d) to include the terms of an original conservation easement expressly authorizes and does not prohibit the construction or operation of a building, facility, utility project or other item in infrastructure. Subsection (c) changes a nonprofit organization acting rather than holding for the municipality. It also deletes in accordance with the terms of the conservation easement. Adds Subsection (k) to read this section does not prohibit the use of real property under the terms of a mineral lease applicable to the property or by a gas utility, common carrier, or energy transporter, as those terms are defined by Section 186.051 of the Utilities Code, other than a municipally owned utility. Subsection (g-2) deletes to the real property subject to the conservation easement. C.S.H.B. 1697 deletes litigation filed after January 1, 2005, in which final judgment has not been entered as of the effective date of this Act and makes section and subsection changes and deletions where needed.